

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SLIM BEN MOHAMED,

Plaintiff

v.

RICHARD T. MURRAY,

Defendant

Case No.: 3:23-cv-00373-ART-CSD

Order

Re: ECF Nos. 1, 1-1

Before the court is Plaintiff's application to proceed in forma pauperis (ECF No. 1) and complaint (ECF No. 1-1).

I. APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

A person may be granted permission to proceed in forma pauperis (IFP) if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

In addition, the Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

"[T]he supporting affidavits [must] state the facts as to [the] affiant's poverty with some particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (quoting *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960)). A litigant need not "be

absolutely destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee; therefore, the application is granted.

II. SCREENING

“[T]he court shall dismiss the case at any time if the court determines that-- (A) the allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) tracks that language. As such, when reviewing the adequacy of a complaint under this statute, the court applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (“The standard for determining whether a plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.”). Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

The court must accept as true the allegations, construe the pleadings in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are “held to less stringent standards than formal pleadings drafted by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotation marks and citation omitted).

1 A complaint must contain more than a “formulaic recitation of the elements of a cause of
 2 action,” it must contain factual allegations sufficient to “raise a right to relief above the
 3 speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading
 4 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]
 5 a legally cognizable right of action.” *Id.* (citation and quotation marks omitted). At a minimum, a
 6 plaintiff should include “enough facts to state a claim to relief that is plausible on its face.” *Id.* at
 7 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

8 Plaintiff’s complaint names Richard T. Murray, the Field Office Manager for the U.S.
 9 Citizenship and Immigration Services’ (USCIS) office in Reno, Nevada, and he requests review
 10 of USCIS’ decision denying his application for naturalization. (ECF No. 1-1.)

11 Federal courts have jurisdiction to conduct judicial review of a denial of an application
 12 for naturalization. *See* 8 U.S.C. § 1421(c). Therefore, Plaintiff’s complaint shall proceed.

13 **III. CONCLUSION**

14 (1) Plaintiff’s application to proceed IFP (ECF No. 1) is **GRANTED**. Plaintiff is
 15 permitted to maintain this action without the necessity of prepayment of fees or costs
 16 or the giving of security therefor.

17 (2) The complaint shall **PROCEED**. The Clerk shall **FILE** the complaint (ECF No. 1-1).

18 (3) Given Plaintiff’s IFP status, the Clerk shall effectuate **SERVICE** under Federal Rule
 19 of Civil Procedure 4(i) as follows:

20 (a) **ADD** the U.S. Attorney for the District of Nevada to the docket and
 21 electronically deliver all documents previously filed in this case;
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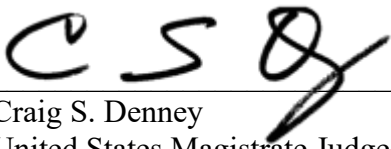
1 (b) **SEND** a copy of the summons and complaint by certified mail to Attorney
2 General of the United States, U.S. Dept. of Justice, 950 Pennsylvania Ave., NW,
3 Washington, D.C. 20530; and

4 (c) **SEND** a copy of the summons and complaint by certified mail to Richard T.
5 Murry, USCIS Field Office Manager, 790 Sandhill Road, Reno, NV 89521

6 (4) Once a defendant is served, Plaintiff must serve a copy of every pleading or other
7 document submitted for consideration by the court upon the defendant or, if an
8 appearance has been entered by counsel, upon the attorney. Plaintiff must include
9 with the original of each document to be filed with the court a certificate stating that a
10 true and correct copy of the document was served on the defendant, or counsel, if the
11 defendant has an attorney. Under Local Rule 5-1 the proof of service must show the
12 day and manner of service and the name of the person served. The court may
13 disregard any paper received which has not been filed with the Clerk, or that fails to
14 include a certificate of service.

15 **IT IS SO ORDERED.**

16 Dated: August 11, 2023

17 
18 Craig S. Denney
19 United States Magistrate Judge
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